

renewal (see § 1.949 of subpart F of this part). The spectrum lessee may operate under the extended term, without further action by the Commission, until such time as the Commission shall make a final determination with respect to the extension of the spectrum leasing arrangement.

EFFECTIVE DATE NOTE: At 68 FR 66277, Nov. 25, 2003, § 1.9030 was added. Paragraph (e) of this section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

**§ 1.9035 Short-term *de facto* transfer leasing arrangements.**

(a) *Overview.* Under the provisions of this section, a licensee (in any of the included services) and a spectrum lessee may enter into a short-term *de facto* transfer leasing arrangement in which the licensee retains *de jure* control of the license while *de facto* control of the leased spectrum is transferred to the spectrum lessee for the duration of the spectrum leasing arrangement, subject to prior Commission consent pursuant to the application procedures set forth in this section. A “short-term” *de facto* transfer leasing arrangement has an individual or combined term of not longer than 360 days.

(b) *Rights and responsibilities of licensee.* The rights and responsibilities applicable to a licensee that enters into a short-term *de facto* transfer leasing arrangement are the same as those applicable to a licensee that enters into a long-term *de facto* transfer leasing arrangement, as set forth in § 1.9030(b).

(c) *Rights and responsibilities of spectrum lessee.* The rights and responsibilities applicable to a spectrum lessee that enters into a short-term *de facto* transfer leasing arrangement are the same as those applicable to a spectrum lessee that enters into a long-term *de facto* transfer leasing arrangement, as set forth in § 1.9030(c).

(d) *Applicability of particular service rules and policies.* Under a short-term *de facto* leasing arrangement, the service rules and policies apply to the licensee and spectrum lessee in the same manner as under long-term *de facto* transfer

leasing arrangements (see § 1.9030(d)), except as provided herein:

(1) *Use restrictions and regulatory classification.* Use restrictions applicable to the licensee also apply to the spectrum lessee except that § 20.9(a) of this chapter shall not preclude a licensee in the services covered by that rule from entering into a spectrum leasing arrangement with a spectrum lessee that chooses to operate on a PMRS, private, or non-commercial basis, and except that a licensee with an authorization that restricts use of spectrum to non-commercial uses may enter into a short-term *de facto* transfer leasing arrangement that allows the spectrum lessee to use the spectrum commercially.

(2) *Designated entity/entrepreneur rules.* Unjust enrichment provisions (see § 1.2111 of subpart Q of this part) and transfer restrictions (see § 24.839 of this chapter) do not apply with regard to a short-term *de facto* transfer leasing arrangement.

(3) *Construction/performance requirements.* The licensee is not permitted to attribute to itself the activities of its spectrum lessee when seeking to establish that performance or build-out requirements applicable to the licensee have been met.

(4) *Cellular cross-interest rule and policies.* The cellular cross-interest rule and policies (see § 22.942 of this chapter) do not apply with regard to short-term *de facto* transfer leasing arrangements.

(5) *E911 requirements.* If E911 obligations apply to the licensee (see § 20.18 of this chapter), the licensee retains the obligations with respect to leased spectrum. A spectrum lessee entering into a short-term *de facto* transfer leasing arrangement is not separately required to comply with any such obligations in relation to the leased spectrum.

(e) *Spectrum leasing application.* Parties entering into a short-term *de facto* transfer leasing arrangement are required to file an electronic application with the Commission, using FCC Form 603, and obtain Commission consent prior to consummating the transfer of *de facto* control of the leased spectrum, except that parties falling within the provisions of § 1.911 of subpart F of this part may file the application either

electronically or manually. Commission approval of such application is granted pursuant to special temporary authority (STA) policies (see section 309(f) of the Communications Act).

(1) *Application fees.* The spectrum leasing application will be treated as a transfer of control for purposes of determining the applicable application fees as set forth in § 1.1102 of subpart G of this part.

(2) *Approval procedures.* (i) The spectrum leasing application must be filed at least ten (10) days prior to the date on which the spectrum lessee seeks to commence operation under the spectrum leasing arrangement. If the application meets the conditions specified in this section for a short-term *de facto* transfer leasing arrangement, it will be granted or denied within ten (10) days of receipt of the complete application.

(ii) The Commission may grant authority to permit operation under a short-term *de facto* transfer leasing arrangement for a maximum period of 180 days. The Commission may grant extension of the temporary authority as provided in § 1.9035(g)(2).

(iii) In no event may parties use the procedures for short-term *de facto* transfer leasing arrangements to enter into arrangements that would exceed 360 days.

(3) *Contents of the application.* (i) The application must contain all information requested on the applicable form, FCC Form 603, and any additional information and certifications required by the rules in this chapter and any rules pertaining to the specific service for which the application is filed.

(ii) The application must contain a showing that grant of the temporary authority to permit implementation of the short-term *de facto* transfer leasing arrangement would further the public interest.

(4) *Effective date of spectrum leasing arrangement.* The spectrum leasing arrangement will be deemed effective in the Commission's records, and for purposes of the application of the rules set forth in this section, on the date specified in the grant of temporary authority.

(f) *Restrictions on the use of short-term de facto transfer leasing arrangements.* (1) The licensee and spectrum lessee

are not permitted to use the special rules and expedited procedures applicable to short-term *de facto* transfer leasing arrangements for arrangements that in fact will exceed 360 days, or that the parties reasonably expect to exceed 360 days.

(2) The licensee and spectrum lessee must submit, in sufficient time prior to the expiration of the short-term *de facto* transfer spectrum leasing arrangement, the appropriate application under the rules and procedures applicable to long-term *de facto* leasing arrangements, and obtain Commission consent pursuant to those procedures.

(g) *Expiration, extension, or termination of the spectrum leasing arrangement.* (1) Except as provided in paragraph (g)(2) or (g)(3) of this section, a spectrum leasing arrangement entered into pursuant to this section will expire on the termination date set forth in the grant of temporary authority. The Commission's grant of temporary authority pursuant to the *de facto* transfer leasing application includes consent to return the leased spectrum to the licensee at the end of the term of the spectrum leasing arrangement.

(2) Upon proper application (see § 1.9035(e)), a short-term *de facto* transfer leasing arrangement may be extended beyond the initial term set forth in the application, for one or more terms of up to 180 days each, provided that the initial term and extension(s) together would not result in a leasing arrangement that exceeds a total of 360 days.

(3) If a spectrum leasing arrangement is terminated earlier than the termination date set forth in the notification, either by the licensee or by the parties' mutual agreement, the licensee must file a notification with the Commission, no later than ten (10) days after the early termination, indicating the date of the termination. If the parties fail to put the spectrum leasing arrangement into effect, they must so notify the Commission consistent with the provisions of this section.

(h) *Conversion of a short-term spectrum leasing arrangement into a long-term de facto transfer leasing arrangement.* (1) In the event the licensee and spectrum lessee involved in a short-term *de facto* transfer leasing arrangement seek to

extend the spectrum leasing arrangement beyond the 360-day limit for short-term *de facto* transfer leasing arrangements, the parties may do so provided that they meet the conditions set forth in paragraphs (h)(2) and (h)(3) of this section.

(2) If a licensee that holds a license that continues to be subject to transfer restrictions and/or requirements relating to unjust enrichment pursuant to the Commission's small business and/or entrepreneur provisions (see § 1.2110 of subpart Q of this part and § 24.709 of this chapter) seeks to extend a short-term *de facto* transfer leasing arrangement with its spectrum lessee (or related entities, as determined pursuant to § 1.2110(b)(2) of subpart Q of this part) beyond 360 days, it may convert its arrangement into a long-term *de facto* transfer spectrum leasing arrangement provided that it complies with the procedures for entering into a long-term *de facto* transfer leasing arrangement and that it pays any unjust enrichment that would have been owed had the licensee filed a long-term *de facto* transfer spectrum leasing application at the time it applied for the initial short-term *de facto* transfer leasing arrangement.

(3) The licensee and spectrum lessee are not permitted to convert a short-term *de facto* transfer leasing arrangement into a long-term *de facto* transfer leasing arrangement if the parties would have been restricted, in the first instance, from entering into a long-term *de facto* transfer leasing arrangement because of a transfer, use, or other restriction applicable to the particular service (see § 1.9030).

(i) *Assignment of spectrum leasing arrangement.* The rule applicable to long-term *de facto* transfer leasing arrangements (see § 1.9030(g)) applies in the same manner to short-term *de facto* transfer leasing arrangements.

(j) *Transfer of control of spectrum lessee.* The rule applicable to long-term *de facto* transfer leasing arrangements (see § 1.9030(h)) applies in the same manner to short-term *de facto* transfer leasing arrangements.

(k) *Revocation or automatic cancellation of a license or the spectrum lessee's operating authority.* The rule applicable to long-term *de facto* transfer leasing

arrangements (see § 1.9030(i)) applies in the same manner to short-term *de facto* transfer leasing arrangements.

(l) *Subleasing.* A spectrum lessee that has entered into a short-term *de facto* transfer leasing arrangement is not permitted to enter into a spectrum subleasing arrangement.

(m) *Renewal.* The rule applicable with regard to long-term *de facto* transfer leasing arrangements (see § 1.9030(k)) applies in the same manner to short-term *de facto* transfer leasing arrangements, except that the extension of the short-term *de facto* transfer leasing arrangement into the term of the renewed license authorization cannot enable the combined terms of the short-term *de facto* transfer leasing arrangements to exceed 360 days. The licensee must notify the Commission of such an extension of the spectrum leasing arrangement on the same application it submits for license renewal (see § 1.949 of subpart F of this part).

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**§ 1.9040 Contractual requirements applicable to spectrum leasing arrangements.**

(a) Agreements between licensees and spectrum lessees concerning spectrum leasing arrangements entered into pursuant to the rules of this subpart must contain the following provisions:

(1) The spectrum lessee must comply at all times with applicable rules set forth in this chapter and other applicable law, and the spectrum leasing arrangement may be revoked, cancelled, or terminated by the licensee or Commission if the spectrum lessee fails to comply with the applicable requirements;

(2) If the license is revoked, cancelled, terminated, or otherwise ceases to be in effect, the spectrum lessee has no continuing authority or right to use the leased spectrum unless otherwise authorized by the Commission;

(3) The spectrum leasing arrangement is not an assignment, sale, or transfer of the license itself;